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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,300	09/28/2001	Patrick E. McCallister	45105/KMO/C944	3920

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/965,300	<b>Applicant(s)</b> MCCALLISTER ET AL.	
	<b>Examiner</b> Steven L. Weinstein	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-27 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Upon reconsideration and in view of the different issues involved between article claims and method claims, the following restriction requirement is made:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-3 and 16-21, drawn to a pasta product and container, classified in class 426, subclass 113.
- II. Claim 14, 15, and <sup>22-</sup>27, drawn to a method of preparing pasta, classified in class 426, subclass 234.

The inventions are related as product and process of use.

The inventions are distinct each from the other because the article as claimed in Group I could be used in a process other than that as claimed in Group II. For example, as applicants themselves have pointed out, it is well known to merchandise a package of food wherein the food is placed in another cooking utensil and it is also known to add hot water to reconstitute food. The product of Group I could be used in these ways. Therefore, the product of Group I does not require the microwave heating of the food in the container with the top off.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art requiring separate searches as shown by their different classification, restriction is proper.

To expedite prosecution, it is noted that the amendment has added quite a few new limitations, not previously recited. These limitations are being presented as apparently contributing to patentability. Are applicants implying they are the first to provide a container with a flanged rim or add a de-nesting lug to a container wall? Applicants are requested to submit any references they are aware of relative to the new limitations.

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Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (571) 272-1201.

S. Weinstein/af  
April 20, 2004

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
4/20/04